NOLIA FERN RICKER
CLYDE LLOYD ATWATER

IBLA 80-251, 80-253 Decided July 11, 1980

Appeals from decisions of the Nevada State Office, Bureau of Land Management, rejecting Indian allotment applications N 25922 and N 26089.

Affirmed.

1. Indian Allotments on Public Domain: Generally

   No rights of Indians are violated because public lands have been withdrawn from settlement and must be classified pursuant to the Taylor Grazing Act, 43 U.S.C. § 315 (1976), before public lands can be allotted to an Indian under section 4 of the General Allotment Act of 1887, 25 U.S.C. § 334 (1976).

2. Applications and Entries: Generally -- Indian Allotments on Public Domain: Generally

   An application for an Indian allotment filed on behalf of a minor child, pursuant to sec. 4 of the General Allotment Act, as amended, 25 U.S.C. § 334 (1976), which is unaccompanied by the certificate of eligibility required by 43 CFR 2531.1(b) and (d), is properly rejected.

APPEARANCES: Nolia Fern Ricker and Clyde Lloyd Atwater, pro sese.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Nolia Fern Ricker and Clyde Lloyd Atwater each filed an application for an Indian allotment on behalf of a minor child,

pursuant to section 4 of the General Allotment Act (Act) of February 8, 1887, 24 Stat. 389, as amended, 25 U.S.C. § 334 (1976). Appellant Ricker filed on behalf of her grandson, Larry Eugene Abrahamson. The offer was designated N 25922. Appellant Atwater's offer, designated N 26089, was filed for his nephew, Lynn E. Haynes.

The Bureau of Land Management (BLM) issued the same decision in response to each application, saying:

> The regulations contained in 43 CFR 2531.1(d) state that ". . . The law only permits one eligible himself under the fourth section to take allotments thereunder on behalf of minor children or those to whom he stands in loco parentis . . . ."
>
> There is no documentation in our file as to the eligibility of you to make application under the fourth section of the Act. Therefore, your application is hereby rejected. The case will be closed, without further notice to you, when this decision becomes final.

Because the same decision and the same issues are involved in each appeal we have sua sponte consolidated the appeals for consideration.

Appellants assert that the certificate of eligibility is not necessary. They add that allotment rights should accrue by virtue of the Indian descent and United States citizenship. Each listed a series of statutes in support of these arguments.

[1, 2] Section 4 of the Act authorizes the Secretary of the Interior to issue allotments to Indians where they have made settlement on available public lands, Thurman Banks, 22 IBLA 205 (1975). Allotments may be selected by heads of families for minor children. 25 U.S.C. §§ 332, 334 (1976). Regulation 43 CFR 2531.1(d), promulgated pursuant to the Act, indicates that only an eligible Indian parent or guardian may apply for allotments for minor children. Regulation 43 CFR 2531.1(b) requires a showing of eligibility as follows:

> Any person desiring to file application for an allotment of land on the public domain under this act must first obtain from the Commissioner of Indian Affairs a certificate showing that he or she is an Indian and eligible for such allotment, which certificate must be attached to the allotment application. Application for the certificate must be made on the proper form, and must contain information as to the applicant's identity, such as thumb print, age, sex, height, approximate weight, married or single, name of the Indian tribe in which membership is claimed,

> etc., sufficient to establish his or her identity with that of the applicant for allotment. Each certificate must bear a serial number, record thereof to be kept in the Indian Office. The required forms may be obtained as stated in § 2531.2(b).

43 CFR 2531.2(b) adds that: "Blank forms for petitions and applications may be had from any office of the Bureau of Indian Affairs, or from land offices of the Bureau of Land Management."

None of the appellants submitted the required certificate. Instead, in the application blank space specifically requesting the number of the certificate issued by the Bureau of Indian Affairs (BIA), appellants entered "8 U.S.C. § 1401 Const. Amend. 5." This response does not compor with the requirements. Neither the cited statute, which refers to United States citizenship, nor the Constitution is in issue here.

The appellants referred again to 8 U.S.C. § 1401 (1976) and to their citizenship in response to the application question asking for a petition for classification. They are both irrelevant here.

There is no clear information 1/ to show that any of the applicants have, in fact, physically settled upon the lands applied for, and, particularly, that any alleged settlement was prior to withdrawal of the lands from settlement, including that by Indians under the General Allotment Act. Also, there is nothing in the record to show that the lar have been classified for Indian allotment. Therefore, the petition for classification which is necessary to open the lands for settlement is required. It is well established that no rights of Indians are violated the withdrawal of public land from settlement and the requirement that su lands be classified pursuant to the Taylor Grazing Act, 43 U.S.C. § 315 (1976), before the public lands can be allotted to an Indian under sectio 4 of the General Allotment Act. Pallin v. United States, 496 F.2d 27 (9t Cir. 1974); Hopkins v. United States, 414 F.2d 464 (9th Cir. 1969); Finch v. United States, 387 F.2d 13 (10th Cir. 1967), cert. denied, 390 U.S. 1012. Nor is there a violation of any rights if an allotment application is denied where land is not classified for allotment. Finch v. United States, supra. Therefore, the BLM office properly required appellants to file the petition for classification.

BLM properly rejected appellants' applications for the procedural reasons discussed above. Geneiva Nell Maston Smith, 48 IBLA 199

1/ In fact, appellants in their applications specifically disclaimed occupancy of the land by themselves and the minor children and also disclaimed bona fide settlements on the lands.

(1980). There may be additional reasons unexpressed. If appellants inter to refile on behalf of these children, we advise strongly that in additio to acquiring the required certification from BIA, they also enlist help from BIA and BLM to assure that all requirements for filing the applicati and petitioning for classification are met. We make no ruling on whether any individual applicant in either case is qualified. Our ruling is that each applicant has failed to meet the preliminary procedural requirements

The additional statutes that the appellants cite do not obviate the need for this certificate of eligibility. Certain of these statutes amer the General Allotment Act, supra. The rest, 18 Stat. 420, 43 U.S.C. § 18 (1976), and 23 Stat. 96, 43 U.S.C. § 190 (1976), referring to Indian homesteads, were repealed in 1976 by the Federal Land Policy and Manageme Act of 1976, 90 Stat. 2787. Nothing that the appellants have stated obviates their need to comply with the regulations implementing section 4 of the General Allotment Act. Because appellants are not applying under law that only requires United States citizenship, the fact that they are citizens is irrelevant here. Allotments for minor children may only be granted after compliance with the specific requirements of the Act and it implementing regulations.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

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Joan B. Thompson
Administrative Judge

We concur:

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James L. Burski
Administrative Judge

_____
Frederick Fishman
Administrative Judge